

1
2
3
4
5
6
7 BEFORE THE INSURANCE COMMISSIONER
8 OF THE STATE OF WASHINGTON

9
10 In the Matter of the Application regarding
11 the Conversion and Acquisition of Control of
12 Premera Blue Cross and its Affiliates
13
14

NO. G02-45

INTERVENERS' MOTION FOR AN
EMERGENCY HEARING BEFORE
THE COMMISSIONER

15 **MOTION**

16
17 Interveners respectfully request a hearing before the Commissioner at the earliest
18 possible opportunity for the purpose of addressing three topics:

19 (1) Whether, after the deadline established in the Thirteenth Order for filing an
20 amended Form A, Premera will be permitted to make substantive changes to the proposed
21 conversion transaction without such changes being deemed to amount to the submission of
22 a new Form A, thereby triggering a new review period;

23 (2) Under what conditions Interveners will be permitted access to Premera's
24 suggested amendments to the draft consultant reports and other comments submitted by
25 Premera to the OIC Staff concerning those reports; and
26

1 (3) The timing and conditions under which Interveners will be permitted access to
2 the final and complete versions of the Consultant Reports.

3 BACKGROUND

4 Under the Thirteenth Order, if Premera elected to submit an amended Form A
5 application, it was required to do so by October 15, 2003. It was also required to submit
6 any proposed amendments to the consultants' reports "to address factual errors" on the
7 same date. Interveners have been advised that Premera did not submit an amended Form A
8 but did submit proposed changes addressing purported factual errors. We are further
9 advised that Premera has indicated to the OIC Staff that it intends to offer substantive
10 changes to the proposed conversion transaction with the OIC Staff. Our understanding of
11 these substantive changes is limited because they have been discussed in secret.
12 Nevertheless, we have learned that Premera is suggesting structural changes to the
13 proposed conversion transaction in order to address certain issues raised in the consultants'
14 reports.¹ We further understand that Premera is proposing that between now and October
15 27, 2003, when the final consultant reports are due, it will privately negotiate with the OIC
16 Staff to resolve these issues.

17 While Interveners have no idea whether the OIC Staff are receptive to Premera's
18 overtures, it is clear to us that any attempt by Premera to privately negotiate significant
19 changes in the form of the proposed transaction (which would presumably be unveiled for
20 the first time when the final consultant reports are submitted on October 27 but could even
21 occur on the eve of the administrative hearing), would directly conflict with the
22

23
24
25
26 ¹ The Commissioner's Eighth Order ("Protective Order") and Fifteenth Order necessarily constrain
Interveners from divulging confidential and proprietary information in this public filing.

1 Commissioner's commitment to meaningful public involvement in the regulatory review
2 process and would also deny Interveners their statutory right to meaningfully protect their
3 significant interests. Without a meaningful opportunity for the OIC consultants, the
4 Interveners and their experts and the public to fully review the impact of such changes, the
5 benefits of the adjudicative process that the Holding Company Acts require will be lost and
6 public confidence in the regulatory process significantly compromised. In short, the
7 Commissioner should not allow any back-room negotiations about the form of the
8 proposed conversion transaction or the structure of the resulting entities.
9

10 In order to maintain the integrity of the process, and to remain faithful to the intent
11 of the Holding Company Acts (as construed by Judge Casey), Interveners request a ruling
12 by the Commissioner that, if Premera suggests or agrees to any substantive change to the
13 structure of the proposed conversion transaction, such a change will be treated as the
14 submission of a new Form A, thereby triggering a new review period under the Acts.
15

16 In addition, to insure that Interveners are able to meaningfully respond to whatever
17 changes Premera is proposing to the Consultant Reports or to the form of the transaction,
18 the Commissioner should require Premera to provide to the Interveners complete copies of
19 the comments or suggestions it has made to the OIC Staff regarding the consultants'
20 reports. Interveners have already served a request for production on Premera, seeking
21 those documents. Their production could be subject to the existing Protective Order, if
22 Premera believes that is appropriate.
23

24 In addition, the Commissioner should order Premera to produce to Interveners the
25 drafts of the Alaska consultant reports, which we understand will be delivered to Premera
26

1 later this week. This will allow Interveners, who are parties to these proceedings, to have
2 access to the same information as Premera and the OIC Staff. As with the Washington
3 consultant reports, Interveners have already served a request for production of these
4 documents on Premera and do not object to appropriate designations under the Protective
5 Order.

6 Finally, the Commissioner should address an ambiguity in the Thirteenth Order,
7 which provides for delivery of the final consultants' reports on October 27, 2003, but does
8 not specify whether Interveners will be afforded access to the unredacted version of those
9 reports. In the Fifteenth Order, the Commissioner ruled that Interveners should, subject to
10 the Protective Order, have access to the complete draft reports. Interveners now request (in
11 light of concerns expressed by the OIC Staff) that the Thirteenth Order be clarified by
12 expressly ruling that Interveners will be provided the complete versions of the final
13 consultant reports on October 27, 2003. Interveners have no objection to obtaining those
14 documents via request for production directed to Premera.
15
16

17 **RELIEF REQUESTED**

18 Interveners respectfully request entry of an Order as follows:

19 1. If Premera requests or agrees to substantive changes to the structure of the
20 proposed conversion transaction, the proposed changes will not be considered unless
21 Premera submits a revised Form A filing, which (if deemed complete) will trigger a new
22 review period under the Holding Acts;
23

24 2. That Premera be ordered to immediately produce to Interveners unredacted
25 copies of its submissions to the OIC Staff in response to the consultants' reports. Premera
26

1 may designate those documents "confidential" or "attorneys' eyes only," as appropriate
2 under the Protective Order;

3 3. That Premera be ordered to immediately produce to Interveners unredacted
4 copies of the Alaska consultant reports. Premera may designate those documents
5 "confidential" or "attorneys eyes only," as appropriate under the Protective Order; and
6

7 4. That Premera or the OIC Staff be ordered to produce to Interveners
8 unredacted copies of the final OIC consultant reports on October 27, 2003 and the Alaska
9 consultant reports as soon as available. Premera may designate those documents
10 "confidential" or "attorneys' eyes only," as appropriate under the Protective Order.

11 Interveners will make themselves available at the Commissioner's convenience for
12 such a hearing, and respectfully request that the Commissioner establish a schedule for any
13 further briefing regarding the same, if such is deemed necessary.
14

15 Respectfully submitted this 21st day of October 2003.

16 BENNETT BIGELOW & LEEDOM, P.S.

17 By /S/
18 Michael Madden, WSBA #8747
19 Attorneys for Interveners WSHA and
20 AWPHD

21 SUBMITTED ON BEHALF OF ALL INTEVENER
22 GROUPS

23 w:\wdclient\1936\00001\mm349367.doc
24
25
26